EXTENSIONS OF REMARKS

PRIVATE ACTIVITY BOND CLARIFICATION ACT OF 1999

HON. TOM DeLAY

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 30, 1999

Mr. DELAY. Mr. Speaker, today I introduce the Private Activity Bond Clarification Act of 1999. This legislation, which will clarify existing law with respect to the use of tax exempt bonds, is needed to protect taxpayer dollars from being used to subsidize essentially private activities. The bill will also ensure a level playing field for other businesses which are excluded from, or do not seek, subsidies from the American taxpayer through tax-exempt bond financing.

As most of our colleagues know, interest on bonds issued by State and local governments is generally exempt from federal income tax. The federal tax exemption allows the bonds to carry lower interest rates, which in turn lowers the cost of borrowing. State and local governments are then better able to finance schools, roads, public transportation and other public infrastructure projects.

At the same time, federal tax law and regulations issued by the Treasury Department have been carefully tailored—as they should be—to ensure that this tax exemption is not abused for private gain. Tax-exempt bonds should not be used to give private individuals or businesses a preferential benefit at the expense of the American taxpayer.

For example, under current law, if facilities financed with State and local government bonds are used more than 10 percent of the time directly, or indirectly, in a trade or business by a private person or business, the IRS may consider the bonds ''private activity bonds'' and interest paid on them generally will not be excluded from a bondholder's taxable income. For purposes of determining whether this 10 percent test is met, use of a financed facility is treated as a direct use of the proceeds, and any activity carried on by a private person is treated as a trade or business. When a financed facility is used by several private persons, use by all private entities is aggregated for purposes of determining whether the 10% private business use threshold is met.

For the most part, private business use of a facility is only deemed to occur if a private person, group, or business has a special legal entitlement to the use of the financed facility under an arrangement with the state or local government that issued the bonds. Typically, such an arrangement would involve the ownership or lease of the facility, or a management contract involving the facility, that grants priority rights in using the facility.

Although it appears that existing tax law, as interpreted by the Treasury regulations, may be adequate to assure that all businesses and members of the general public are treated fairly in matters involving the use of facilities constructed with tax-exempt bonds adoption of the legislation I introduce today to codify key elements of the regulatory rules will help to ensure that this valuable—and costly—tax subsidy is not misused for the benefit of private individuals instead of the taxpayers. I emphasize that the bill leaves the ultimate determination as to whether the law has been violated in a specific case up to the IRS as it is under current law.

You see, Mr. Speaker, while tax-exempt bond financing is largely carried out in a manner consistent with the purposes set forth in the tax law and regulations, as with just about any federal program in which a tax subsidy is involved, there are always those who are looking for ways to ''push the envelope'' to gain the benefit of a tax subsidy for their own private business purposes.

The impetus for this legislation was prompted by press reports of a proposal to build, with tax-exempt bonds, a massive new Convention Center in Las Vegas. However, my concern is not with that community per se, but rather with the potential implications for all American taxpayers, and the potential precedent which could be established, should financing of this facility go forth in the face of statutes and regulations which suggest it should be ineligible for tax-exempt treatment.

According to press reports, a group of private businesses referred to as the Consortium, is currently seeking to take advantage of tax-exempt bond financing to promote construction in Las Vegas of a new 1.3 million square foot convention center, which when completed, will be one of the largest such facilities in the country. It will be larger than the Astrodome, the George R. Brown Convention Center, the Dallas Convention Center and even the Javits Center in New York.

I understand that once ground is broken for this facility, the members of the Consortium who have worked with local authorities to develop this facility will be provided with preferential rights to lease the facility for the purpose of putting on money-making trade shows. These preferential rights will allow Consortium members to ''lock up'' more than 60 percent of the available rentable days for the new facility each year through 2009. Furthermore, from a business standpoint, the specific dates to be ''locked up'' by the Consortium are more valuable than those that will be left over for use by others. In effect, the benefits of the federal subsidy utilized in financing this facility are being largely transferred to the handful of businesses comprising this Consortium.

The situation in Las Vegas raises the possibility that the lack of a specific definition of ''related parties'' may lead bond issuing authorities and their counsel to mistakenly conclude that only those business users related by law (e.g., corporations and their wholly-owned subsidiaries) are to be treated as ''related parties.'' Such a narrow, legalistic interpretation could result in bonds being wrongfully issued in instances where, as in this case, a principal purpose for which the facility is being financed is for the use of a group of private parties who are related in fact. Parties that are not related by law can nevertheless by agreement act in such concert that they should, and presumably would, be treated by the IRS as related parties.

Mr. Speaker, allow me at this point to reiterate that my concern here is not Las Vegas per se. However, I will point out that the new facility financed with the use of these federally tax-exempt bonds will both compete with convention facilities in Houston, and ''lock in'' to Las Vegas through 2009 these trade shows, effectively denying Houston and other communities the opportunity to attract these conventions to our region.

In any event, it should be obvious that Congress did not intend to provide carte blanche to private businesses to band together to facilitate construction of a tax-exempt financed facility—which would then be largely made available to those businesses for their own commercial purposes. The legislation I introduce today will protect the taxpayer's interest in this regard by simply clarifying the definition of ''related parties'' already found in the Treasury regulations that implement the ''private business use'' limitations in the tax code.

My bill would enable the IRS, acting on a case-by-case basis, to determine that parties should be treated as ''related parties'' if they have at any time acted in concert to negotiate an arrangement to facilitate the financing of a property financed with tax-exempt bonds, and enter into preferential arrangements for the use of such property. The collective use of a facility by related parties would be aggregated when applying the 30 and 90 days safe harbors (and the 180 days general limitation) found in the IRS' current regulations.

I will point out that local governments can of course continue to avoid any potential uncertainty about the rules on ''related parties'' by applying for an advance ruling by the IRS that the limitations on ''related parties'' do not apply to their particular proposals.

To protect the interests of the American taxpayer, and to assure a level playing field for private business, it is important that Congress act to clarify the rules governing tax-exempt bond financing so that potentially hundreds of millions of dollars in of tax-exempt bonds are not mistakenly issued—whether in Las Vegas or elsewhere. So as to put the public on notice, and to help prevent any bond from being issued based on a mistaken interpretation of the rules governing private activity bonds, the legislation would apply to bonds issued after July 1, 1999.

PROBLEMS IN PANAMA

HON. ENI F.H. FALEOMAVAEGA

OF AMERICAN SAMOA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 30, 1999

Mr. FALEOMAVAEGA. Mr. Speaker, I wish to inform our colleagues and our great Nation of important, recent developments in Latin America.